

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALEXANDER ADAM FUNICELLO,	)	
	)	
Petitioner,	)	
	)	1:15CV1018
v.	)	1:11CR315-1
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

RECOMMENDATION AND ORDER  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, submitted a Letter (Docket Entry 23) in which he appears to seek a reduction in his sentence. Petitioner cannot simply request a reduction, but must provide some legal basis for the reduction. In his present filing, he refers to changes in the law, but does not specify any changes that affect his case. Nevertheless, this reference is arguably an attack on the conviction or sentence he received in this Court. The document he filed is not a recognizable method for achieving this goal. Instead, the proper avenue for such an attack is ordinarily a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. For this reason, the Court will construe the submission as such a motion. However, the Motion cannot be further processed because the Court's records reveal that Petitioner previously attacked the same conviction and sentence in a § 2255 motion [1:14CV512]. Consequently, Petitioner must move in the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current Motion. This is required

by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. See AO 243 (MDNC 10/07), Instructions, ¶ (4), which is enclosed. Because of this pleading failure, this particular Motion should be filed and then dismissed.

IT IS THEREFORE RECOMMENDED that this action be filed and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the court of appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 1st day of December, 2015.

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/s/ L. Patrick Auld  
**L. Patrick Auld**  
**United States Magistrate Judge**